



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** IPS Group  
**File:** B-235988  
**Date:** October 6, 1989

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### **DIGEST**

Late hand-carried proposal was properly rejected as late where a preponderance of the evidence does not establish that the protester delivered the offer to the designated location prior to the time set for closing.

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### **DECISION**

IPS Group protests the rejection of its offer as late under request for proposals (RFP) No. DLA400-89-R-2980, issued by the Defense Logistics Agency (DLA) for the installation of a packing and conveyor system at the Defense General Supply Center in Richmond, Virginia.

We deny the protest.

The RFP set the closing date for receipt of proposals at 2 p.m. on May 31, 1989, if hand-carried, offers were to be delivered to the bid depository located in the reception area of Building 32 at the installation prior to the time and date set for opening.

According to affidavits submitted to our Office by DLA, the bid custodian, in accordance with her normal practice, unlocked the depository at 2 p.m. on May 31 and removed the proposals; the receptionist at the front desk witnessed the actions of the bid custodian and signed a log book attesting to the opening and removal of the proposals. The bid custodian then took the proposals back to her desk and stamped the date and time on the front of the envelopes. Proposals for procurements that closed on May 31 at 2 p.m. were taken by the bid custodian to the respective buyers while the remaining proposals were locked in a safe until the appropriate closing date. On June 1, at 11 a.m., an alternate bid custodian opened the depository and, as witnessed by the receptionist, took the proposals out and carried them to her desk, where they were date and time stamped. IPS' proposal was stamped at 11:30 a.m. on

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June 1. Accordingly, IPS was notified that its proposal would not be considered for award because it had been submitted after the scheduled closing date and time.

In its protest, IPS argues that its proposal in fact was timely delivered to the designated location. According to an affidavit executed by Ms. Betty D. Kinder, she was asked by the president of IPS, Claude Kinder, to deliver IPS' proposal and, accordingly, on May 31 she hand-delivered the proposal to Building 32 at approximately 12:10 p.m., almost 2 hours prior to the 2 p.m. closing time. Ms. Kinder states that when she arrived in the reception area, there was no one available to confirm receipt and, after waiting several minutes, she dropped the proposal in the depository; she heard it "hitting bottom," making a louder noise than if the envelope were cushioned by other envelopes. IPS maintains that the "late receipt" of its proposal therefore can only be attributable either to the government's failure to remove the bid from the depository at 2 p.m. on May 31, or to subsequent government mishandling. In this regard, IPS notes that on subsequent occasions when its proposal has been delivered, Ms. Kinder has noted that, contrary to the affidavits furnished by the agency, only one person looks inside the depository to remove offers; thus, while removal may be witnessed, the witness cannot verify that all offers have been removed from the depository. IPS speculates that its proposal in fact may have rested, unseen, in a vertical position against one side of the interior walls of the depository.

As a general rule, it is the responsibility of the offeror to assure timely receipt of its offer, and the late delivery of an offer requires its rejection. See International Technologies, Inc., B-203216, May 29, 1981, 81-1 CPD ¶ 427; see generally Gull's, Inc., B-232599, Jan. 25, 1989, 89-1 CPD ¶ 74. Late hand-carried proposals may only be considered for award where improper government action was the paramount cause for the late receipt and consideration of the proposal would not compromise the integrity of the competitive procurement process. Alden Elecs., B-227940, Sept. 21, 1987, 87-2 CPD ¶ 287. When the issue is whether a hand-carried offer was timely received, we consider all relevant evidence in the record, which may include statements by both the protester's employees and government personnel. However, unless a preponderance of the evidence indicates that the offer was timely delivered, the proposal may not be considered for award. See International Steel Erectors, B-233238, Feb. 13, 1989, 89-1 CPD ¶ 146; Santa Cruz Constr., Inc., B-226773, July 2, 1987, 87-2 CPD ¶ 7.

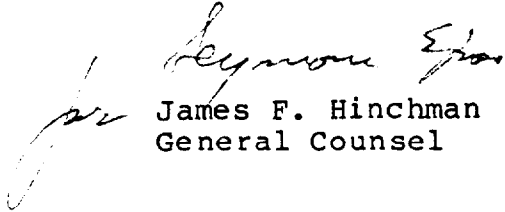
We find that a preponderance of the evidence does not establish that IPS delivered its proposal to the bid depository prior to the schedule closing at 2 p.m., on May 31. We think the record establishes no basis for concluding that the proposal reasonably could have been overlooked when the box was opened. The top of the box, which contains a slot for depositing bids, is hinged at the rear and secured by a padlock; the box is opened by swinging the top up and backward on the hinges. Because of this construction, in order to remove packages from the box, the bid custodian must look inside the box to retrieve the packages; in this regard, it is clear from the photographs that the entire interior of the box, which is only 16-1/2 inches wide by 10-3/8 inches long by 28 inches deep, is easily observable.

Similarly, the record contains no evidence supporting a conclusion that the bid custodian overlooked the IPS offer during the logging in process. In her sworn statement, the bid custodian states that, after she removed the packages from the bid depository, she immediately took them to her desk where she time and date stamped them; she states that she did not leave any packages lying on her desk that afternoon, and the alternate custodian who removed packages from the bid depository box at 11 a.m. on June 1 has verified that the bid custodian's desk was clear when she placed the packages she had retrieved from the bid depository on the desk for time and date stamping. In these circumstances, the 11:30 a.m., June 1 time and date stamp on IPS's proposal suggests that the proposal was received sometime after the May 31, 2 p.m. closing date.

The only evidence offered by IPS to refute the agency's position is the statement of IPS's employee that she placed the IPS proposal in the depository at about 12:10 p.m., on May 31. However, the record here establishes the existence of agency procedures which are likely to result in the timely recording of any offers placed in the depository, and the uncontroverted direct evidence from agency employees indicates that the procedures were followed; at the same time, the record contains no independent evidence that the procedures were not followed, and no evidence of receipt prior to the scheduled closing at 2 p.m., on May 31. Given these circumstances, we do not believe that the unsupported statement of an employee of the protester as to delivery prior to closing meets the high standard of proof necessary to assure the unquestioned integrity of the competitive procurement system.

Accordingly, we find that IPS's proposal was properly determined to be a late offer that could not be considered for award.

The protest is denied.

James F. Hinchman  
General Counsel